

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 7043

BILL NUMBER: HB 1637

NOTE PREPARED: Apr 7, 2009

BILL AMENDED: Apr 7, 2009

SUBJECT: Mortgage Foreclosures.

FIRST AUTHOR: Rep. Bardon

FIRST SPONSOR: Sen. Charbonneau

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State and Local

Summary of Legislation: (Amended) *Funding for Foreclosure Counseling:* The bill creates a \$50 court fee, on persons filing an action to foreclose a mortgage, applicable to actions filed after June 30, 2009, and before January 1, 2013, for purposes of providing sufficient money to provide foreclosure prevention counseling and assistance programs.

Presuit Notice: The bill provides that in the case of a residential mortgage transaction in which the debtor defaults after June 30, 2009, the creditor shall, before filing an action for foreclosure, provide a presuit notice to the debtor that informs the debtor that the creditor intends to initiate foreclosure proceedings, that the debtor may obtain assistance from a foreclosure counselor, and that provides information on how to contact a counselor. The bill establishes certain exceptions to the presuit notice requirement.

Settlement Conference Notice: The bill provides that, if a creditor files an action for foreclosure, the creditor shall include with the complaint a notice to the debtor that informs the debtor of the debtor's right to participate in a settlement conference, and that if the debtor wishes to participate in a settlement conference, the debtor must contact the court not later than 30 days after notice is served.

Foreclosure Judgement Conditions: The bill provides that a court may not render a judgment of foreclosure until 60 days after the notice is filed, unless the premises are vacant.

Settlement Conference Conduct: The bill specifies that, if a settlement conference is conducted: (1) it must be scheduled between 25 and 60 days after the notice is sent; (2) the debtor must contact a foreclosure counselor before the conference and bring certain documents to the conference; (3) the creditor must bring a complete transaction history to the conference; (4) the creditor's agent must have the authority to negotiate

with the creditor; and (5) the conference will be conducted by telephone unless the parties make a contrary stipulation. The bill provides that the court may require any person who is a party to the action to participate in a settlement conference, and that the court may reconvene a settlement conference.

Filing Foreclosure Prevention Agreement: The bill requires the creditor to file a copy of the foreclosure prevention agreement with the court if the parties reach an agreement, and provides that a foreclosure action may be stayed or dismissed for as long as the debtor complies with the terms of the foreclosure agreement. The bill specifies that if a foreclosure is dismissed and the debtor defaults in the terms of the foreclosure agreement, the creditor may bring a new foreclosure action without being required to send certain notices. The bill provides that participation in a settlement conference satisfies any mediation or alternative dispute resolution requirement established by court rule.

Other Changes & Conforming Amendments: The bill makes other changes and conforming amendments.

Notice of Foreclosure Requirements: The bill provides that certain notice of foreclosure requirements apply to all mortgagees.

Foreclosure Consultant Records: The bill requires a foreclosure consultant to retain certain records for a specific time.

Licensing Board Provisions: The bill allows certain licensing boards to require practitioners to pay real estate appraisal costs in certain administrative actions. The bill prohibits certain professional licensing boards from accepting the surrender of a practitioner's license if the Attorney General has filed a complaint against the practitioner and opposes the surrender.

Disciplinary Actions: The bill provides that a broker or salesperson licensee who violates the credit services organizations or mortgage rescue protection fraud provisions is subject to certain disciplinary actions.

Prohibitions: The bill prohibits a person from: (1) engaging in real estate transactions or consumer credit mortgage transactions without a permit or license; or (2) misrepresenting certain terms and characteristics of real estate transactions and consumer credit mortgages; and subjects a person who violates any of these prohibitions to certain penalties under the home loan practices law.

Removal of Prohibition of Deceptive Act: The bill removes language prohibiting a person from engaging in a deceptive act in connection with certain loans.

Effective Date: (Amended) Upon passage; July 1, 2009.

Explanation of State Expenditures: (Revised) *Presuit Notice:* The Indiana Housing and Community Development Authority (IHCDA) would prescribe the form for presuit notices. The effect on IHCDA expenditures to prescribe the form would be negligible.

(Revised) *Licensing Board Provisions:* The state could experience a cost savings if the Professional Licensing Agency via the Board of Appraisers could require a licensee to recoup all or some of the complaint investigation costs incurred by the Attorney General (AG). This provision could also increase the workload of a professional licensing board if action had to be taken against more practitioners.

(Revised) *Prohibitions:* By broadening the scope of the Home Loan Practices Act to include consumer credit

mortgages, the AG's Homeowner Protection Unit (HPU) could see an increase in civil litigation, which would increase the AG expenditures. The bill does not make an appropriation; therefore, the AG and HPU would have to accomplish additional cases within their existing level of resources.

Background Information: The AG expended \$250 to \$500 per appraisal complaint investigation and reviewed 130 appraiser cases during 2008. The AG reverted \$173,490 at the close of FY 2008.

Explanation of State Revenues: (Revised) *Funding for Foreclosure Counseling:* The bill temporarily imposes a Mortgage Foreclosure Counseling and Education Fee equal to \$50 on foreclosure filings made between after June 30, 2009, and before January 1, 2013, when the Fee expires. Assuming between 40,000 and 50,000 foreclosure filings per year over the next two years, the Fee could potentially generate \$2.0 M to \$2.5 M annually in FY 2010 and FY 2011. Annual foreclosure filings are likely to decline in the long run from the current levels, thus, the yield from the Fee is likely to decline from these levels in FY 2012. The FY 2013 revenue yield would only be for one-half year.

(Revised) *Foreclosure Consultant Records:* A foreclosure consultant that fails to retain records as required by the bill could be subject to civil penalties for fraudulent acts if brought by the AG to a court of record. The penalty for an incurable deceptive act under IC 24-5-0.5 is \$500.

(Revised) *Prohibitions:* The bill changes which persons would not be allowed to engage in a real estate transaction or mortgage transaction. Under current law, the person would have to be engaged in a deceptive act. Under the bill, the person would have to be licensed. This provision could increase the number of persons held in violation of the Home Loan Practices Act, under which a person may be charged with a Class A misdemeanor. If a violator faced violation of the Home Loan Practices Act, a civil penalty could be up to \$10,000 per violation.

Background Information: The Mortgage Foreclosure Counseling and Education Fee is to be collected by the circuit court clerk from the party filing an action to foreclose a mortgage. The bill requires the circuit court clerk to distribute the revenue from the Fee semiannually to the State Auditor. The Fee revenue is to be deposited in the Home Ownership Education Account within the state General Fund established under current statute. Current statute requires the money in the Account to be used for foreclosure prevention counseling and assistance programs.

Current statute permits the Indiana Housing and Community Development Authority to establish a program to provide free mortgage foreclosure counseling and education to homeowners who have defaulted on or are in danger of defaulting on the mortgages on their homes. The program may include a toll free phone line homeowners can call to receive mortgage foreclosure counseling and education. Current statute also permits the Authority to award grants for training counselors and to establish standards for certifying counselors.

From FY 2002 to FY 2007, annual foreclosure filings grew by an average of 8.1% annually from about 29,731 to 43,804. Monthly foreclosure statistics from foreclosure.com and realtytrac.com for January and February suggest that foreclosure filings could total 40,000 to 50,000 in 2009.

Explanation of Local Expenditures: (Revised) *Court Action:* The court provisions, within the bill, could slow filings of foreclosure actions. However, if these provisions slowed proceedings once an action was allowed to be filed under the bill, courts could see an increase in their case backlog.

Background Information: During 2007, trial courts had 43,804 new filings, 42,600 cases disposed, and 23,331 cases pending on December 31, 2007, related to mortgage foreclosure.

Explanation of Local Revenues: (Revised) *Prohibitions:* The following fee distributions would apply for additional court actions.

If additional court actions are filed and a judgment is entered, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$70 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: Indiana Housing and Community Development Authority; Auditor of State Attorney General; professional licensing boards.

Local Agencies Affected: Circuit court clerks; Trial courts.

Information Sources: 2007 Indiana Judicial Service Report; <http://www.foreclosure.com/state/in.html>; <http://www.realtytrac.com/states/Indiana.html>. Matt Light, Deputy Attorney General, Attorney General's Office, 232-4774.

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